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1 (The following is from a tape-recording of proceedings:)

2 THE CLERK: Calling 15 CV 50113, Schlaf, et al. v.  
3 Safeguard Properties, LLC.

4 THE COURT: Good afternoon, counsel. Could I get  
5 appearances for the record, starting with the plaintiff, please?

6 MS. FARBSTAIN: Good morning, your Honor. We have  
7 Emiliya Farbstein and Cathleen Combs here for plaintiff.

8 THE COURT: Good afternoon.

9 MS. MASIELLO: Good morning, your Honor. This is -- or  
10 good afternoon. This is Dina Masiello on behalf of Ditech from  
11 Pilgrim Christakis.

12 MR. TOPALIS: Good afternoon, your Honor. Panos  
13 Topalis on behalf of Safeguard Properties.

14 THE COURT: Good afternoon.

15 All right. I've received the parties' submissions.  
16 I've been through them. Hold on one second here. So, subject  
17 matters 1, 3, 5, and 6 are agreed to, right? The answer to that  
18 is yes.

19 MS. FARBSTAIN: Yes.

20 THE COURT: Okay. Let's talk about some of the other  
21 ones. Let me just start with a general proposition. Look. The  
22 subject matters need to be narrow and tight. Otherwise, the  
23 witness' answers are going to be vague and goofy. So, you get  
24 what you ask for. I'm not saying that the descriptions are so  
25 vague that they are impossible to respond to, but the broader

1 the descriptions, the looser the descriptions, the less likely  
2 someone's going to be able to give the deposing party a tight,  
3 concise answer. I think we all know that. So, that's the  
4 general proposition.

5 Let's look at number two. Ditech's concern is that  
6 visual inspections, in quotations, is an undefined term, but  
7 visual inspections is contained in the master property service  
8 agreement. So, if it's a term in Ditech's own document, why is  
9 that a concern?

10 MS. MASIELLO: Your Honor, this is Dina Masiello on  
11 behalf of Ditech. That is a term that is contained in the  
12 document. However, it's not the name of the inspection that it  
13 relates to. It's a description. So, the clarification was  
14 whether or not the -- which inspection plaintiffs are referring  
15 to. The visual inspection is a description that is contained.  
16 So, that's where, you know, the clarification was sought to make  
17 sure that the parties were referring to the same type of service  
18 that is offered by Safeguard.

19 THE COURT: All right. Lynyrd Skynyrd counseled us to  
20 be simple kind of men, and I assume that applies to women.  
21 Visual inspections. I would suspect that that term would mean  
22 to use your eyes and use your vision and look at an object or  
23 entity or thing and inspect it. And I assume when Ditech wrote  
24 the phrase visual inspections, it kind of knew what it meant.

25 So, can we just go with what that term generally means

1 in the ordinary understanding of English and as used in Ditech's  
2 own document?

3 MS. MASIELLO: Your Honor, this is Dina Masiello from  
4 Ditech. Just for clarification, it is a phrase that's used by  
5 Safeguard in the documents that it provided to Ditech, and the  
6 phrase visual inspection is used in multiple instances within  
7 the agreement. It is --

8 THE COURT: Does it mean different things in different  
9 locations in the same document? Because that would be odd.

10 MS. MASIELLO: It doesn't, your Honor. It's just a  
11 matter of which inspection. There are certain types of  
12 inspections that Safeguard will perform for Ditech. Those each  
13 have specific names, and within the names of those are  
14 descriptions of the inspection. So, it's just a matter of  
15 clarifying which inspection it is that plaintiffs are referring  
16 to.

17 THE COURT: Okay. So, plaintiff, which one do you  
18 want? Which visual inspection? What kind of visual inspection  
19 do you want?

20 MS. COMBS: Your Honor, we're taking a deposition.

21 THE COURT: I understand that.

22 MS. COMBS: We're entitled to ask them to explain what  
23 services they provide, and then we'll tell them which of the  
24 ones are important. I mean, you're asking us to guess what they  
25 do without taking the dep. It seems to me that if it's a phrase

1       that they use in their documents, then we'll in the course of  
2       the deposition ask them to explain it and then tell them what we  
3       want.

4               THE COURT: Well, then they're not going to be able  
5       to -- then you're in the middle of a deposition, and they don't  
6       know which witness to produce or how to prepare that witness.

7               So, I'm asking you. What you're asking for is a  
8       witness who could testify about visual inspections. Ditech's  
9       coming back and saying there are multiple different types of  
10      visual inspections. Which visual inspections do you want?

11              MS. COMBS: We want all of them.

12              THE COURT: Okay.

13              MS. COMBS: And why not? Because in fact --

14              THE COURT: Counsel. Counsel. First of all, watch  
15      your tone. Secondly, don't interrupt me. Let me go back to  
16      Ditech.

17              Can you produce a witness who can talk about all of  
18      them?

19              MS. MASIELLO: Yes, Judge. We can produce a witness  
20      who can discuss the inspections that Safeguard provides.

21              THE COURT: Okay. So, that takes care of that aspect  
22      of this objection.

23              Let me ask the plaintiff. How are these -- how would  
24      that be relevant to a claim or defense?

25              MS. FARBSTAIN: The defense, the broadest version of

1       Safeguard's defense, is that they're not a debt collector, and  
2       one of the things they point to is that the contact attempt  
3       inspections are merely a throw-on that they sometimes offer with  
4       regards to visual inspections, which they say are not debt  
5       collection. So, we want to know why is Ditech ordering this,  
6       what are they getting.

7               THE COURT: All right. Help me tie that up to whether  
8       or not they're a debt collector. I mean, if they're going out  
9       there looking at properties, how is that relating to debt  
10      collection? I know there's this affirmative defense that's  
11      raised, but tighten it up for me. I'm a little lost.

12             MS. FARBSTAIN: Your Honor, the contact attempt  
13      inspection actually involves communicating with the debtor,  
14      whereas just a plain visual exterior inspection would not  
15      involve communicating with the debtor, and one of our possible  
16      positions is that the communication is what constitutes the debt  
17      collection.

18             THE COURT: Okay. All right. So, okay. I'm following  
19      on more closely then. If it's a visual inspection and there's  
20      nothing communicated, how would a visual inspection be an  
21      attempt to collect a debt?

22             MS. FARBSTAIN: I think that that's our point is that  
23      just a visual inspection isn't.

24             THE COURT: Okay.

25             MS. FARBSTAIN: But when it's got the contact added to

1       it, then it becomes an attempt to collect a debt.

2               THE COURT: Or it may become.

3               MS. FARBSTAIN: That's correct. That will be the legal  
4 question we'll be discussing at length.

5               THE COURT: Okay. Number four. The extent to which  
6 Ditech uses Safeguard services to meet HUD requirements. The  
7 concern is the HUD requirements aren't identified. I think  
8 they're looking at for whatever HUD requirements were mentioned  
9 when counsel was in court and said that's what they did. So,  
10 can we identify -- specify which HUD requirements are  
11 applicable? That seems relatively straightforward, right?

12              MS. MASIELLO: Yeah, I think plaintiff should be able  
13 to do that.

14              THE COURT: Okay. Can plaintiff do that?

15              MS. COMBS: I think defendants should be able to do  
16 that.

17              MS. FARBSTAIN: Since they're the ones who brought it  
18 up.

19              THE COURT: All right, defendant. Which HUD  
20 requirements are applicable?

21              MS. MASIELLO: Judge, there are a series of HUD  
22 requirements that come into play when dealing with an FHA loan,  
23 which is the loan in this situation. If that is what they're  
24 looking for, that's fine. I'm not sure how it's up to defendant  
25 to identify documents or standards that plaintiffs want to



1 question our witness on.

2 THE COURT: Their point is that Ditech's response was  
3 we'd do this because of HUD requirements, and they want to know  
4 which HUD requirements. If you could just give them a range  
5 from whatever CFR to whatever CFR, that would be specific  
6 enough.

7 I will tell you this is a seven-hour dep. If  
8 plaintiffs' counsel wants to spend a lot of hours on each one of  
9 those regulations, you got seven hours. Be careful how you use  
10 your time.

11 All right. So, identify the range of the federal  
12 regulations that are at play, and that will take care of that  
13 one.

14 Eight and nine, they're basically the same. The extent  
15 to which Safeguard manages money or property for Ditech. That's  
16 way too broad. Nine. The extent to which Safeguard managed  
17 money or property for Ditech in relation to plaintiffs' account.  
18 What's the problem with that one?

19 MS. MASIELLO: Judge, we don't have any idea what  
20 they're talking about managed money or property. Safeguard is a  
21 preservation company. We provided them with the agreement  
22 between the two parties which spells out in detail the services  
23 that Safeguard provides for Ditech.

24 THE COURT: Okay.

25 MS. MASIELLO: So, managing money and property, what

1 does that mean? And they're assuming -- that's a very vague  
2 assumption.

3 THE COURT: Okay. So, then you couldn't produce a  
4 witness who would testify to that, right?

5 MS. MASIELLO: Correct. We've already agreed with  
6 counsel that we would produce a witness who could testify  
7 regarding the services that Safeguard provides to Ditech.

8 MS. FARBSTAIN: Your Honor, if Ditech is willing to  
9 provide somebody who can testify to the services that Safeguard  
10 provides and if none of those services are managing money or  
11 property, that will resolve the issue.

12 THE COURT: Okay. That seems like something that could  
13 have been done without me intervening, but okay. So, that will  
14 answer that one.

15 Number ten. The concern is the word interpretation; is  
16 that right?

17 MS. MASIELLO: Yes, your Honor. And specifically  
18 looking at plaintiffs' counsel's submission to you last week,  
19 again there's still some confusion. On the one hand, they point  
20 out they want somebody to -- they're seeking to understand the  
21 meaning of the various codes and numbers contained in this  
22 document, and on the other hand, they say that -- it looks like  
23 they want somebody to provide information as to the payment  
24 status of plaintiffs' account at the time that the inspection  
25 was ordered, which, again, I'm not sure what they're looking for

1       here. Those are two very different things.

2               THE COURT: And those are two very different things.

3       So, do you want somebody to tell you what the payment codes mean  
4       or the other issue?

5               MS. FARBSTAIN: Well, both. And our understanding when  
6       Ditech produced this document, it indicated that the documents  
7       were produced in response to requests asking for the status of  
8       plaintiffs' account. Therefore, we'd like -- this seems like  
9       the documents that give that answer, and we'd like to understand  
10      what, in fact, it gives.

11              MS. MASIELLO: Judge, I would just like to interject  
12      there and say that Ditech objected to a request for documents  
13      regarding the, quote, status and payment histories, and through  
14      multiple conversations with plaintiffs' counsel, we were able to  
15      identify that plaintiffs' counsel wanted the customer account  
16      activity statements, which is essentially a billing statement.

17              THE COURT: Okay.

18              MS. MASIELLO: So, there is a big difference there.

19              THE COURT: Right. So, the billing statement has these  
20      codes, right?

21              MS. FARBSTAIN: Correct.

22              THE COURT: Okay. Plaintiff wants to know what the  
23      codes are, right?

24              MS. FARBSTAIN: Correct.

25              THE COURT: And what they mean and how it relates to

1 the billing statement that's at issue in the property in this  
2 case, right?

3 MS. FARBSTEIN: Correct.

4 THE COURT: All right. Ditech will produce somebody to  
5 do that for that document, those billing codes relating to this  
6 case, and that will be the ruling.

7 Anything else to talk about this afternoon?

8 MS. FARBSTEIN: I think seven was -- did we discuss  
9 seven?

10 THE COURT: Hold on one second. We did not.

11 All right. Plaintiff, tell me what you're trying to  
12 get at there.

13 MS. FARBSTEIN: As I mentioned a number of times, one  
14 of Safeguard's defenses is that they were a -- they had a bona  
15 fide fiduciary obligation to Ditech, and part of the process of  
16 proving a bona fide fiduciary obligation relates to the  
17 oversight and control by the principal of the agent. So, that's  
18 what we're trying to get at.

19 THE COURT: How so? Where is that concept of oversight  
20 and control coming in? Is that statutory? Is it regulatory?  
21 Is it in the agreement? Where are we getting that?

22 MS. FARBSTEIN: It's case law, your Honor.

23 THE COURT: Okay. All right. So, what's the response  
24 to that? If the case law says control and oversight is an  
25 element, are you just saying it's too broad, or what are you

1 getting at?

2 MS. MASIELLO: Judge, we're saying, first of all, this  
3 is Safeguard's affirmative defense. This is not -- Ditech is  
4 not a party to this case. Ditech is a third-party that has not  
5 raised any affirmative defenses.

6 THE COURT: Sure.

7 MS. MASIELLO: So, I assume that any questions that  
8 plaintiffs' attorney has regarding an affirmative defense raised  
9 by Safeguard would have been addressed in the deposition of the  
10 Safeguard representative.

11 Number two, we had discussed with plaintiff that we  
12 were narrowing this deposition to three topics, and through  
13 multiple objections and discussions, we narrowed those topics,  
14 and at no point was it ever raised that plaintiffs wanted to  
15 depose somebody regarding oversight and control by Ditech. So,  
16 that's where our objection comes in.

17 THE COURT: Okay. So, Ditech's grumbling because  
18 you're dropping on this late, and it should have been raised  
19 earlier. When was it raised?

20 MS. MASIELLO: We agreed to these three topics on  
21 May 25th, your Honor.

22 THE COURT: Okay.

23 MS. FARBSTAIN: Your Honor, these three so-called  
24 topics were Ditech's provided understanding of what plaintiff  
25 had requested, which took them about a month and a half to

1 provide, by the way, despite multiple conversations in the  
2 meantime and multiple requests from plaintiffs for updates as to  
3 the deposition. And in my view types of services encompassed  
4 the relationship between Ditech and the control and oversight by  
5 Ditech of Safeguard.

6            Luckily, you asked us to be more specific here, and so  
7 we were able to be more specific and thus learned that Ditech  
8 had not envisioned that as part of the agreed-upon description  
9 of the topic. But at no time did plaintiffs agree to narrow the  
10 topics. It was a clarification, not a narrowing by any means.

11            THE COURT: Okay. Look. No one cited me the case law.  
12 I don't have it in front of me. I don't have time to pull it  
13 up. You know, fiduciary does go to control and direction.

14            I'll go back to my initial response or my initial big  
15 point is if the categories are broad, the answers will be broad.  
16 I'm not saying Ditech -- and Ditech shouldn't produce a  
17 know-nothing witness, but that's a pretty broad category. And  
18 so, if you start drilling down and the witness three levels deep  
19 starts saying I don't know, it's going to be tough for me to  
20 hold that witness' feet to the fire. So, Ditech produce  
21 somebody as best you can to answer that. Okay?

22            MS. MASIELLO: Okay, your Honor.

23            THE COURT: All right. Anything else to talk about?

24            MS. FARBSTAIN: I don't believe so, your Honor.

25            THE COURT: Okay. Deposition's limited to seven hours.

1       Use it wisely.

2               MS. FARBSTAIN: Thank you, your Honor.

3               THE COURT: Thanks.

4               MR. TOPALIS: Okay. Thank you.

5               MS. MASIELLO: Thank you.

6               (Which were all the proceedings had in the above-entitled  
7               cause on the day and date aforesaid.)

8               I certify that the foregoing was transcribed from digital  
9               recording to the best of my ability.

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11       /s/ Mary T. Lindbloom

12       Official Court Reporter

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